

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Hypertherm, Inc.

v.

Civil No. 05-cv-373-JD

American Torch Tip Company

Procedural Order

In preparation for trial, the court has reviewed the docket in this case. There are four motions for summary judgment pending, the resolution of which may substantially change the issues for trial. ATTC has moved to exclude evidence of convoyed sales and has filed four motions in limine on evidentiary issues. Hypertherm has filed a "Daubert" motion to preclude ATTC from offering the testimony of its expert witness, James Sprague, on issues of infringement and patent validity. Hypertherm also filed a motion for leave to file updated damages calculations. In addition, Hypertherm has filed nine motions in limine. All of the matters raised in the pending motions are disputed.

The Daubert motion, filed only three and half weeks ago, raises serious and complex questions about whether James Sprague is qualified to testify as an expert witness on issues of patent

infringement and validity in this case. ATTC moved to seal its response, which motion has been granted, and the court is awaiting the filing of the unredacted version. Hypertherm has indicated that it intends to seek leave to file a reply. It is likely that a hearing will be necessary to properly evaluate the motion and the qualification issues. The parties' trial preparation will be affected by the result.

Therefore, the trial of the infringement claims and defenses, which is scheduled for the trial period beginning on February 18, 2009, must necessarily be rescheduled to provide time to resolve the pending matters. At present, the trial period beginning on April 21, 2009, is open and available as a time to reschedule this trial. The court proposes that the trial be rescheduled for that time.

The court will meet with counsel on February 3, 2009, as scheduled to discuss scheduling and other matters. Attached to this order is a "Proposed Procedural Order," which counsel should

review and be prepared to discuss with the court at the conference on February 3.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

January 29, 2009

Attachment

cc: Jill C. Anderson, Esquire
Jacob K. Baron, Esquire
Steven M. Bauer, Esquire
Lucas M. Blower, Esquire
Colin G. Cabral, Esquire
Seth M. Cannon, Esquire
Joseph A. Capraro, Jr., Esquire
Christopher J. Carney, Esquire
Jeffery M. Cross, Esquire
Joseph T. Dattilo, Esquire
Maia H. Harris, Esquire
Marc H. Kallish, Esquire
Rhett R. Krulla, Esquire
Jonathan A. Lax, Esquire
Edward F. McCormack, Esquire
Richard C. Nelson, Esquire
W. Scott O'Connell, Esquire
Jeremy P. Oczek, Esquire
Richard D. Rochford, Jr., Esquire
David W. Ruoff, Esquire
John T. Shapiro, Esquire
John M. Skeriotis, Esquire
Benjamin M. Stern, Esquire
Wayne Tang, Esquire